

INTERIM STUDY PROPOSAL 95-53

REQUESTING THE SENATE INTERIM COMMITTEE ON INSURANCE AND
COMMERCE AND THE HOUSE INTERIM COMMITTEE ON INSURANCE
AND COMMERCE TO CONDUCT A STUDY OF THE IMPACT OF
PROPOSED FEDERAL REGULATORY CHANGES ON THE REGULATORY
AUTHORITY OF THE ARKANSAS PUBLIC SERVICE COMMISSION, THE
STATE'S TELECOMMUNICATIONS INDUSTRY, AND THE CITIZENS OF
ARKANSAS.

WHEREAS, telecommunications is playing an ever-increasing
role in all aspects of the lives of the citizens of the State of
Arkansas and the United States of America; and

WHEREAS, the pace of technological change in the
telecommunications industry has reached unprecedented levels; and

WHEREAS, new levels of competition exist and may increase in
this industry which will fundamentally alter the economic
conditions in which telecommunications public utilities operate;
and

WHEREAS, the regulatory environment in which
telecommunications industry operates has not kept pace with the
technological changes this industry is experiencing; and

WHEREAS, a number of states have enacted major
telecommunications reform legislation this year and major reform
legislation is pending before the United States Congress; and

WHEREAS, the enactment of changes at the federal level could
have a profound effect on the citizens of Arkansas and the
regulatory authority of the Arkansas Public Service Commission as
it relates to telecommunications; and

WHEREAS, any changes in the regulatory environment should be
designed to maintain universal service for all Arkansas citizens as
well as ensure that all competitors compete on fair and equal
terms; and

WHEREAS, the cornerstone of these significant public policies
should be set by the Arkansas Legislature, not by the courts or
regulatory agencies; and

WHEREAS, a study should be conducted by the Senate Interim
Committee on Insurance and Commerce and the House Interim Committee
on Insurance and Commerce to determine what changes, statutory or
regulatory, may be necessary to ensure that the citizens of

1 Arkansas have access to a modern system of telecommunications while
2 at the same time ensuring that basic local exchange service is
3 available to all Arkansas citizens at reasonable and affordable
4 rates. In addition, the study should address what changes may be
5 necessary in the role and organizational structure of the Arkansas
6 Public Service Commission in recognition of the increasingly
7 competitive environment in telecommunications;

8 NOW THEREFORE,

9 BE IT PROPOSED BY THE LEGISLATIVE COUNCIL OF THE STATE OF ARKANSAS;

10 THAT the Arkansas Legislative Council requests the Senate
11 Interim Committee on Insurance and Commerce and the House Interim
12 Committee on Insurance and Commerce to conduct a study, with the
13 cooperation of all agencies in the Executive Branch, to determine
14 what actions by the State of Arkansas are necessary to refocus
15 existing telecommunications regulation in this state and to ensure
16 affordable access to a modern system of telecommunications for the
17 citizens of Arkansas and report its findings to the Legislature at
18 its next special or regular session.

19 THAT in order to ensure that no actions interfere with or
20 preempt the Legislature's determination of the appropriate policy
21 to pursue for telecommunications reform in Arkansas, the Arkansas
22 Legislative Council requests that the Arkansas Public Service
23 Commission suspend any pending regulatory proceedings regarding
24 telecommunications issues related to competition and universal
25 service until the findings of the interim committees are issued and
26 pending federal legislation is resolved to ensure proper public
27 input in an area that will have far-reaching ramifications on the
28 economic, health, and welfare of the citizens of Arkansas.

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30
31 Respectfully submitted,

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34 Representative Edward F. Thicksten
35 District 11

Representative David Beatty
District 22

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37 EFT/mhf
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9 FILED: November 16, 1995

ARKANSAS GENERAL ASSEMBLY

Senator Jerry Bookout
Co-Chairman



MAR 12 3 18 PM 1996
Representative David Beatty
Co-Chairman

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TELECOMMUNICATIONS SUBCOMMITTEE OF THE
HOUSE AND SENATE INTERIM COMMITTEES ON
INSURANCE AND COMMERCE

March 4, 1996

Sam I. Bratton, Chairman
Arkansas Public Service Commission
P. O. Box 400
Little Rock, AR 72203

Dear Chairman Bratton:

The Telecommunications Subcommittee of the House and Senate Interim Committees on Insurance and Commerce met Thursday, February 29, 1996 to discuss the direction the Subcommittee will take in studying telecommunications policy. As you are aware, the Legislature intends to take a proactive role in developing telecommunications policy in this State.

To avoid any misunderstanding, this correspondence is intended to clearly communicate to the Commission our strong desire that no policy decisions be made in the form of orders from the Commission until the Legislature has had an opportunity to study these issues. Therefore, please confirm in writing the Commission's agreement that no orders will be issued in Docket No. 86-159-U or any other docket affecting the general level of carrier access charges or universal service funding.

Further, we are concerned about the workshops being held in conjunction with Docket 86-159-U. Policy decisions are apparently being discussed and developed that could usurp our desire to play the major role in developing telecommunications policy. Therefore, we request such workshops not require parties involved to enter into any binding reports involving policy issues the Subcommittee might take up in future meetings.

We look forward to your immediate response.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Bookout".

Senator Jerry Bookout

A handwritten signature in black ink, appearing to read "David Beatty".

Representative David Beatty



Jerrell L. Clark
Director
682-1794

ARKANSAS
PUBLIC SERVICE COMMISSION

1000 Center
P.O. Box 400
Little Rock, Arkansas 72203-0400

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Sam L. Bratton, Jr.
Chairman
682-1453

Patricia S. Qualls
Commissioner
682-1451

Julius D. Kearney
Commissioner
682-1455

March 12, 1996

The Honorable Jerry Bookout and
The Honorable David Beatty
Co-Chairmen
Telecommunications Subcommittee
of the House & Senate Interim Committees
on Insurance and Commerce
ARKANSAS GENERAL ASSEMBLY
State Capitol, Room 315
Little Rock, Arkansas 72201

Dear Chairman Bookout & Chairman Beatty:

The Commission has received your letter of March 4, 1996, requesting that the Commission issue no orders in Docket No. 86-159-U or any other Commission docket which would affect the "general level of carrier access charges or universal service funding." As stated in Chairman Sam Bratton's testimony on behalf of the Commission on February 16, 1996, before the Senate and House Interim Committees on Insurance and Commerce, the Commission will not take any action which would interfere with or preempt the General Assembly's authority to revise existing telecommunications policy to address changes in federal telecommunications law and technological advances. The Commissioners fully understand that it is the prerogative and the expressed desire of the General Assembly to reform telecommunications policy for the State of Arkansas. To that end, we have offered our assistance to the Senate and House Interim Committees on Insurance and Commerce and the Telecommunications Subcommittee in their study of telecommunications issues and in the development of legislation to implement the policies formulated by the Joint Interim Committees and the Telecommunications Subcommittee.

Docket No. 86-159-U was opened on August 21, 1986, as a repository for all filings affecting non-traffic sensitive elements of intrastate access charges and the Arkansas Universal Service Fund established pursuant to Ark. Code Ann. §§23-17-301 - 307, the Universal Telephone Service Act. In pleadings and in a public hearing in this Docket the local telephone companies repeatedly requested that the Commission initiate a workshop process to facilitate industry-wide discussions of issues pending in Docket No. 86-159-U. In Order No. 48, the Commission granted the request of the local telephone companies for establishment of a workshop process and the Commission directed that the workshop participants file status reports and a final report on the process. The status reports were intended solely for the purpose of monitoring the workshop process.

To give effect to the Subcommittee's request and to assure that no action is taken in Docket No. 86-159-U which could be construed as an attempt to usurp the General Assembly's desire to reform telecommunications policy, the Commission entered Order No. 49 on March 8, 1996, in Docket No. 86-159-U rescinding Order No. 48 which initiated the workshop process. Order No. 49 does not affect the general level of access charges or universal service funding. Pursuant to Ark. Code Ann. §23-2-420 and §23-2-421, it was necessary to file an order in this Docket to effectuate the request of the Subcommittee.

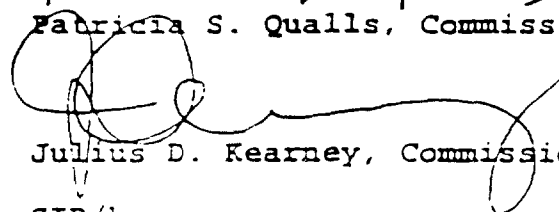
The tariffs for the Arkansas Universal Service Fund established pursuant to Ark. Code Ann. §§23-17-301 - 307 are filed in Docket No. 86-159-U. This is the only pending Commission docket involving universal service funding. Tariffs affecting the traffic sensitive elements of access charges are filed in Docket No. 86-160-U which is the companion docket to Docket No. 86-159-U for access charges. Docket No. 86-160-U, as well as a number of pending Commission dockets may have an impact on the general level of access charges. In accordance with your letter of March 4, 1996, the Commission will not take any action or enter any orders in Docket No. 86-160-U or any other docket which would materially affect the general level of access charges without further consultation with the Subcommittee. However, without Commission action, tariffs may be deemed approved by operation of law pursuant to Ark. Code Ann. §23-4-402, §23-4-407, and §23-4-411. Tariffs that become effective by operation of law may affect the general level of access charges.

The Commission clearly understands the expressed desire of the Telecommunications Subcommittee that revisions to state telecommunications policy be developed by the General Assembly. The Commission will take no action and enter no orders which would preempt or usurp the authority of the General Assembly to develop such policy.

Sincerely,


Sam I. Bratton, Jr., Chairman


Patricia S. Qualls, Commissioner


Julius D. Kearney, Commissioner

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Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997
4

As Engrossed: S1/22/97

A Bill

ACT 77 of 1997

SENATE BILL 54

5 By: Senators Hopkins, Argue, Bearden, Bell, Canada, Dowd, Edwards, Everett, Fitch, Gordon, Gwamey,
6 Harriman, Hill, Hoofman, Hunter, Jeffries, *Kennedy*, Lewellen, Mahony, Malone, Roebuck, Ross, Smith,
7 Todd, Walker, Walters, Webb, and Wilson
8

9 By: Representatives Wagner, Beatty, Thicksten, Capps, Cunningham, Young, Lavery, Purdom, Newman,
10 George, Maddox, Brown, Miller, Fletcher, McKissack, McGee, Malone, Pollan, McGehee, Wilkinson,
11 Willems, Johnson, Rorie, Simon, Broadway, Kidd, Lancaster, Sheppard, Stalnaker, Jones, Bennett, Choate,
12 Davis, Baker, Wood, Northcutt, Simmons, Allison, Flanagan, Horn, Whorton, Cook, Hausam, Jeffress, Hall,
13 Wren, Goodwin, Critcher, McJunkin, Hunton, Harris, French, Joe Hudson, Wallis, Teague, Bond, Shoffner,
14 Ammons, Milum, Booker, Pappas, Walker, Courtway, Roberts, Rodgers, Angel, *and Curran*
15
16

For An Act To Be Entitled

"TELECOMMUNICATIONS REGULATORY REFORM ACT OF 1997."

Subtitle

"TELECOMMUNICATIONS REGULATORY REFORM
ACT OF 1997."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Title.

This act may be referred to and cited as the "Telecommunications
Regulatory Reform Act of 1997".

SECTION 2. Legislative Findings.

It is the intent of the General Assembly in enacting this Act to:

(1) Provide for a system of regulation of telecommunications services,
consistent with the Federal Act, that assists in implementing the national
policy of opening the telecommunications market to competition on fair and
equal terms, modifies outdated regulation, eliminates unnecessary regulation,
and preserves and advances universal service.

1 (2) Recognize that a telecommunications provider that serves high cost
 2 rural areas or exchanges faces unique circumstances that require special
 3 consideration and funding to assist in preserving and promoting universal
 4 service.

5 (3) Recognize differences between the small and large incumbent local
 6 exchange carriers, that there are customer-owned telephone cooperatives and
 7 small locally-owned investor companies, and that it is appropriate to provide
 8 incentives and regulatory flexibility to allow incumbent local exchange
 9 carriers that serve the rural areas to provide existing services and to
 10 introduce new technology and new services in a prompt, efficient and
 11 economical manner. The General Assembly finds that the Commission, when
 12 promulgating rules and regulations, should take into consideration the
 13 differences in operating conditions in the large and small incumbent local
 14 exchange carriers and the burdens placed on small carriers because of
 15 regulation.

16 17 SECTION 3. Definitions.

18 As used in this Act:

19 (1) "Access line" means communications facility extending from a
 20 customer's premises to a serving central office comprising a subscriber line
 21 and, if necessary, a trunk facility.

22 (2) "Affiliate" means any entity that, directly or indirectly, owns or
 23 controls, is owned or controlled by, or which is under common ownership or
 24 control with, another entity. Owns or controls, for the purpose of this
 25 definition means holding at least a majority of the outstanding voting power.

26 (3) "Arkansas IntraLATA Toll Pool" means the unincorporated organization
 27 of the Arkansas incumbent local exchange carriers, approved by the Commission,
 28 whose purpose is to redistribute the pooled revenues from intraLATA toll
 29 telephone service.

30 (4) "Arkansas Intrastate Carrier Common Line Pool" means the
 31 unincorporated organization of the providers of Arkansas telecommunications
 32 services, authorized by the Commission, whose purpose is to manage billing,
 33 collection, and distribution of the incumbent local exchange carrier's intrastate
 34 toll common line service revenue requirements.

35 (5) "Basic local exchange service" means the service provided to the
 36 premises of residential or business customers composed of the following:

.....
 President of the Senate

Speaker
 Attorney General

1 (a) voice grade access to the public switched network, with
 2 ability to place and receive calls,

3 (b) touch tone service availability,

4 (c) flat rate residential local service and business local
 5 service,

6 (d) access to emergency services (911/E911) where provided by
 7 local authorities,

8 (e) access to basic operator services,

9 (f) a standard white page directory listing,

10 (g) access to basic local directory assistance,

11 (h) access to long distance toll service providers, and

12 (i) the minimum service quality as established and required by
 13 the Commission on the effective date of this Act.

14 (6) "Commercial mobile service" means cellular, Personal
 15 Communications Systems and any service regulated pursuant to Part 20 of the
 16 rules and regulations of the FCC (47 CFR Part 20) or any successor provisions.

17 (7) "Commission" means the Arkansas Public Service Commission.

18 (8) "Competing local exchange carrier" or "CLEC" means a local exchange
 19 carrier that is not an incumbent local exchange carrier.

20 (9) "Electing company" means a local exchange carrier that elects to be
 21 regulated pursuant to Sections 6 through Section 8 of this Act.

22 (10) "Eligible telecommunications carrier" means the local exchange
 23 carrier determined in accordance with Section 5 .

24 (11) "Embedded investment" means the amount of investment in telephone
 25 plant that has already been made by an incumbent local exchange carrier as of
 26 the effective date of this act.

27 (12) "FCC" means the Federal Communications Commission.

28 (13) "Facilities" means any of the physical elements of the telephone
 29 plant that are needed to provide or support telecommunications services,
 30 including switching systems, cables, fiber optic, and microwave radio
 31 transmission systems, measuring equipment, billing equipment, operating
 32 systems, billing systems, ordering systems, and all other equipment and
 33 systems that a telecommunications service provider uses to provide or support
 34 telecommunications services.

35 (14) "Federal act" means the Communications Act of 1934, as amended.

36 (15) "Government entity" includes all Arkansas state agencies,

President of the Senate

Bobby L. Hogue
Speaker of the House

1 commissions, boards, authorities, and all Arkansas public educational entities
 2 (including school districts), and political subdivisions (including
 3 incorporated cities and towns and all institutions, agencies or
 4 instrumentalities of municipalities) and county governments.

5 (16) "Incumbent local exchange carrier" means, with respect to a local
 6 exchange area, a local exchange carrier, including successors and assigns,
 7 that is certified by the Commission and was providing basic local exchange
 8 service on February 8, 1996.

9 (17) "Interstate access charge pools" means the system, currently
 10 administered by the National Exchange Carriers Association, wherein
 11 participating local exchange carriers pool billed interstate access revenues.

12 (18) "Local exchange area" means the geographic area, approved by the
 13 Commission, encompassing the area within which a local exchange carrier is
 14 authorized to provide basic local exchange services and switched access
 15 services.

16 (19) "Local exchange carrier" means a telecommunications provider of
 17 basic local exchange service and switched access service. Such term does not
 18 include commercial mobile service providers.

19 (20) "Network element" means a facility or equipment used in the
 20 provision of a telecommunications service. Such term also includes features,
 21 functions, and capabilities that are provided by means of such facility or
 22 equipment, including subscriber numbers, databases, signaling systems, and
 23 information sufficient for billing and collection or used in the transmission,
 24 routing, or other provision of a telecommunications service.

25 (21) "Resale" means the purchase of services by one local exchange
 26 carrier from another local exchange carrier for the purpose of reselling those
 27 services directly or indirectly to an end-user customer.

28 (22) "Rural telephone company" means a local exchange carrier defined as
 29 a rural telephone company in the Federal Act as of the effective date of this
 30 act.

31 (23) "Switched access service" means the provision of communications
 32 between a customer premise and an interexchange carrier's point of
 33 interconnection with a local exchange carrier's network for the completion of
 34 end user calls to the public switched network for the origination or
 35 termination of interexchange long distance traffic.

36 (24) "Telecommunications provider" means any person, firm, partnership,

President of the Senate

Speaker

1 corporation, association, or other entity that offers telecommunications
2 services to the public for compensation.

3 (25) "Telecommunications services" means the offering to the public for
4 compensation the transmission of voice, data, or other electronic information
5 at any frequency over any part of the electromagnetic spectrum,
6 notwithstanding any other use of the associated facilities. Such term does
7 not include radio and television broadcast or distribution services, or the
8 provision or publishing of yellow pages, regardless of the entity providing
9 such services, or services to the extent that such services are used in
10 connection with the operation of an electric utility system owned by a
11 government entity.

12 (26) "Tier One Company" means any incumbent local exchange carrier
13 that, together with its Arkansas affiliates that are also incumbent local
14 exchange carriers, provides basic local exchange services to greater than one
15 hundred fifty thousand (150,000) access lines in the State of Arkansas on the
16 effective date of this Act. Changes in designation of an incumbent local
17 exchange carrier, or portions thereof, as a Tier One Company or non-Tier One
18 Company may be effected by prior approval from the Commission pursuant to
19 Section 11(i).

20 (27) "Universal service" means those telecommunications services that
21 are defined and listed in the definition of basic local exchange service until
22 changed by the Commission pursuant to Section 4(e)(3) of this Act.

23
24 SECTION 4. Preservation and Promotion of Universal Service.

25 (a) The Arkansas Universal Service Fund (AUSF) is established by this
26 Section in order to promote and assure the availability of universal service
27 at rates that are reasonable and affordable, and to provide for reasonably
28 comparable services and rates between rural and urban areas. The AUSF will
29 provide funding to eligible telecommunications carriers that provide basic
30 local exchange services over facilities owned by the eligible
31 telecommunications carrier. The AUSF shall be designed to provide
32 predictable, sufficient, and sustainable funding to eligible
33 telecommunications carriers serving rural or high cost areas of the State.

34 (b) The Arkansas Universal Service Fund is to provide a mechanism to
35 restructure the present system of telecommunication service rates in the State
36 as provided herein, and all telecommunications providers, except as prohibited

1 by federal law, shall be charged for the direct and indirect value inherent in
 2 the obtaining and preserving of reasonable and comparable access to
 3 telecommunications services in the rural or high cost areas. The value and
 4 utility of access to and interconnection with the public switched network will
 5 be lessened if the rural or high cost areas do not have comparable access and
 6 subscribership. This AUSF charge for all telecommunications providers shall
 7 be proportionate to each provider's Arkansas intrastate retail
 8 telecommunications service revenues. In that the customers of the
 9 telecommunications providers that would pay the AUSF charge receive the
 10 benefits of a universal network, such telecommunications providers may
 11 surcharge their customers to recover such AUSF charges paid by the
 12 telecommunications provider. Therefore, the AUSF charge is not a tax, and is
 13 not affected by state laws governing taxation.

14 (c) The Commission shall delegate to a trustee (the "administrator") the
 15 administration, collection, and distribution of the AUSF in accordance with
 16 the rules and procedures established by the Commission and consistent with
 17 this Act. The administrator shall enforce and implement all rules and
 18 directives governing the funding, collection, and eligibility for the AUSF.
 19 Within sixty days after receipt of a request for AUSF funds, the administrator
 20 shall review and determine the accuracy and appropriateness of the request and
 21 advise the entity requesting such funds of his determination. The affected
 22 parties shall have thirty days to request reconsideration by the Commission of
 23 the administrator's determination and the Commission shall after notice and
 24 hearing, if requested, issue its opinion on the reconsideration within thirty
 25 days after the request of reconsideration. Persons aggrieved by the
 26 Commission's opinion shall have the right to appeal such opinion in accordance
 27 with law.

28 (d) The AUSF administrator shall periodically establish and notify each
 29 telecommunications provider of the AUSF charge levels required to be paid by
 30 the telecommunications provider. Any telecommunications provider that fails,
 31 without just cause, to pay the AUSF charge that is due and payable pursuant to
 32 this section shall, after notice and opportunity for hearing, have its
 33 authority to do business as a telecommunications provider in the State of
 34 Arkansas revoked by the Commission. The AUSF charge shall not be subject to
 35 any state or local tax or franchise fees. The Commission is authorized to
 36 increase the AUSF charge by those amounts necessary to recover the cost of

President of the Senate

1 administration of the AUSF.

2 (e) The Commission shall, after reasonable notice and hearing,
 3 establish rules and procedures necessary to implement the AUSF. The
 4 Commission shall implement the AUSF and make AUSF funds available to eligible
 5 telecommunications carriers no later than 90 days following the later of (i)
 6 the effective date of this Act, or (ii) the effective date of an FCC order
 7 pursuant to Section 254 of the Federal Act (47 USC 254), that approves,
 8 establishes or modifies interstate universal service funding. The Commission
 9 shall not, prior to the implementation and availability of funds from the
 10 AUSF, require any local exchange carrier to reduce rates for intrastate
 11 switched access services or require any local exchange carrier to reduce its
 12 net revenue received from the Arkansas IntraLATA Toll Pool (AITP). In
 13 establishing and implementing the AUSF, the Commission shall adhere to the
 14 following instructions and guidelines:

15 (1) AUSF funding shall be provided directly to eligible
 16 telecommunications carriers.

17 (2) The Commission may, after reasonable notice and hearing,
 18 revise the list of universal services, identified in Section 3 of this Act,
 19 that may be supported by the AUSF to establish and maintain end user rates for
 20 universal services that are reasonably comparable between urban and rural
 21 areas, or to reflect changes in the type and quality of telecommunications
 22 services considered essential by the public, as evidenced, for example, by
 23 those telecommunication services that are purchased and used by a majority of
 24 single line urban customers. The Commission shall determine and approve AUSF
 25 funding to eligible telecommunications carriers to recover the cost of
 26 additions or revisions to the universal service list concurrent with any such
 27 revisions to the list of universal services identified in Section 3 of this
 28 Act.

29 (3) If the Commission establishes or utilizes a minimum or
 30 threshold universal service rate (threshold rate), for the purpose of
 31 determining the amount of AUSF that an eligible telecommunications carrier may
 32 receive, the Commission shall adhere to the following requirements:

33 (A) A rate case proceeding or earnings investigation or analysis
 34 shall not be required or conducted in connection with the determination or
 35 implementation of increases in universal service rates associated with
 36 Commission use of a threshold rate, and the increases shall not be included in

1 the calculation of the basic local exchange service rate increase limits
2 specified in Section 7 and Section 12.

3 (B) The Commission may not require a reduction in universal
4 service rates to a threshold rate unless any associated decrease in revenues
5 are allowed to be concurrently recovered from the AUSF.

6 (4)(A) In the event of an FCC order, rule or policy, pursuant to
7 Section 254(a)(2) of the Federal Act, (47 USC 254(a)(2)) the effect of which
8 is to change the federal universal service fund revenues of an incumbent local
9 exchange carrier, the Commission shall either increase the rates for basic
10 local exchange service or increase the incumbent local exchange carrier's
11 recovery from the AUSF or a combination thereof to replace the reasonably
12 projected change in revenues. In determining whether to increase basic local
13 exchange service rates or increase AUSF for a Tier One Company pursuant to
14 this Section, the Commission shall take into account that company's rates and
15 consider whether such rates are below the statewide average.

16 (B) Any rural telephone company, excluding Tier One Companies,
17 that, as a result of changes caused by new or existing federal or state
18 regulatory or statutory directives, experiences a change in intrastate or
19 interstate switched access services revenues, or in net revenue received from
20 the intrastate Carrier Common Line Pool, interstate access charge pools, or
21 the Arkansas IntraLATA Toll Pool, shall be allowed to recover such reductions
22 from the AUSF or through modifications in rates applicable to basic local
23 exchange service. The recovered amounts shall be limited to the net reduction
24 in revenues from all sources of support listed in paragraphs (e)(4)(A) and
25 (e)(4)(B) of this Section.

26 (C) In connection with the receipt of AUSF funds for these
27 changes referred to in paragraph (e)(4)(A) or (e)(4)(B) of this Section, such
28 shall not be conditioned upon any rate case or earnings investigation by the
29 Commission. The AUSF administrator shall verify the calculations and accuracy
30 of the net revenue reductions, based on a comparison between (i) the total
31 annual revenues received from these sources by the eligible telecommunications
32 carrier during the most recent twelve months preceding the required regulatory
33 or statutory changes, and (ii) a reasonable projection of total test year
34 annual revenue after such changes are implemented.

35 (D) Except as provided in this paragraph, the intrastate Carrier
36 Common Line (CCL) Pool charges shall continue as effective on December 31,

1 1996. The Commission is authorized to develop and implement, commencing three
 2 (3) years after the effective date of this Act, a phase-in reduction of
 3 intrastate CCL pool charges until such charges are equivalent to the
 4 interstate CCL charges. Any reduction of intrastate CCL pool charges of
 5 incumbent local exchange carriers ordered by the Commission shall provide for
 6 concurrent recovery of such revenue loss from the AUSF, basic local exchange
 7 rates, or a combination thereof.

8 (5) All eligible telecommunications carriers may request high
 9 cost funding from the AUSF as necessary in the future to maintain rates for
 10 universal services that are reasonable, affordable, and comparable between
 11 urban and rural areas. Except as otherwise provided in this Act, such funding
 12 shall be based on all net investment, including embedded investment, and
 13 expenses incurred by the eligible telecommunications carriers in the provision
 14 of universal service. High cost funding shall be provided to eligible
 15 telecommunications carriers as needed for the following: (A) investments and
 16 expenses required to provide, maintain, and support universal services (B)
 17 infrastructure expenditures in response to facility or service requirements
 18 established by any legislative, regulatory, judicial authority, or
 19 governmental entity, and (C) for other purposes deemed necessary by the
 20 Commission to preserve and advance the public education and welfare.

21 (6) In identifying and measuring the costs of providing universal
 22 services, exclusively for the purpose of determining high cost funding levels
 23 under paragraph (e)(6) of this Section, eligible telecommunications carriers
 24 shall have the following options:

25 (A) The eligible telecommunications carrier may utilize
 26 traditional rate case methods and procedures to identify universal service
 27 revenue requirements and a residual AUSF funding requirement;

28 (B) The eligible telecommunications carrier may identify high cost
 29 areas within its local exchange area, such area being no smaller than a single
 30 exchange or wire center, and perform a fully distributed allocation of cost
 31 and identification of associated revenue in order to quantify funding needs
 32 for such areas; or

33 (C) The Commission shall adopt reasonable cost proxies that may
 34 be used by an eligible telecommunications carrier for this purpose.

35 (7) In calculating revenue requirements only for the purpose of
 36 establishing high cost funding needs from the AUSF the Commission shall not

1 fix depreciation rates; however, the Commission may make reasonable
 2 adjustments to depreciation expense if an eligible telecommunications
 3 carrier's composite depreciation annual accrual rate is greater than the
 4 weighted average of composite rates for similar plant and equipment of all
 5 other telecommunications providers providing comparable services in the State.
 6 In such case, the Commission may adjust depreciation expenses of the eligible
 7 telecommunications carrier to levels that would not exceed 15% above a
 8 composite accrual rate comparable to the statewide weighted average.

9 (f) On or within thirty days following the fifth anniversary of the
 10 effective date of this Act, the Commission and the AUSF administrator shall
 11 complete and deliver a report on the status and performance of the AUSF to the
 12 Legislative Council.

13 (g) The current Arkansas Universal Telephone Service Fund established
 14 pursuant to Arkansas Code Annotated Sections 23-17-301 through 23-17-307 will
 15 continue to exist until the AUSF is funded and operational. At that time any
 16 funds remaining in the current fund will be transferred to the AUSF and the
 17 current fund will no longer be operational.

18
 19 SECTION 5. Eligible Telecommunications Carrier.

20 (a) The incumbent local exchange carrier, its successors and assigns,
 21 which owns, maintains, and provides facilities for universal service within a
 22 local exchange area upon the effective date of this Act, shall be the eligible
 23 telecommunications carrier within such local exchange area.

24 (b) Where the incumbent local exchange carrier receives AUSF support,
 25 except in areas served by rural telephone companies, the Commission,
 26 consistent with Section 214(e)(2) of the Federal Act (47 USC 214(e)(2)), after
 27 reasonable notice and hearing, may designate other telecommunications
 28 providers to be eligible for high cost support pursuant to Section 4 under the
 29 following conditions:

30 (1) The other telecommunications provider accepts the responsibility
 31 to provide service to all customers in an incumbent local exchange carrier's
 32 local exchange area using its own facilities or a combination of its own
 33 facilities and resale of another carrier's services. High cost support under
 34 this Section will not begin until the telecommunications provider has
 35 facilities in place and offers to serve all customers in its service area;

36 (2) The telecommunications provider may only receive funding for the

.....
 President of the Senate

Speaker
 the House

1 portion of its facilities that it owns and maintains;

2 (3) The telecommunications provider will not receive AUSF funding at a
3 level higher than the level of funding received by the incumbent local
4 exchange carrier in the same area;

5 (4) The telecommunications provider advertises the availability and
6 the charges of such services, using media of general distribution; and

7 (5) It is determined by the Commission that the designation is in the
8 public interest.

9 (c) In exchanges or wire centers where the Commission has designated
10 more than one eligible telecommunications carrier, the Commission shall permit
11 a local exchange carrier to relinquish its designation as an eligible
12 telecommunications carrier, consistent with Section 214(e)(4) of the Federal
13 Act (47 USC 214(e)(4)), upon a finding that at least one eligible
14 telecommunications carrier will continue to serve the area.

15 (d) For the entire area served by a rural telephone company, excluding
16 Tier One Companies, for the purpose of the AUSF and the federal universal
17 service fund, there shall be only one eligible telecommunications carrier
18 which shall be the incumbent local exchange carrier that is a rural telephone
19 company. The rural telephone company may elect to waive its right to be the
20 only eligible telecommunications carrier within the local exchange area by
21 filing notice with the Commission. If there is more than one eligible
22 telecommunications carrier, an eligible telecommunications carrier may
23 petition the Commission and be granted relief from designation as an eligible
24 telecommunications carrier.

25 (e) An eligible telecommunications carrier may use commercial mobile
26 services to provide universal services.

27
28 SECTION 6. Electing Companies.

29 (a) Any incumbent local exchange carrier may elect to have the rates,
30 terms, and conditions for its telecommunications services determined pursuant
31 to the provisions of this Section.

32 (b) An incumbent local exchange carrier shall file a notice of its
33 intent with the Commission to be an electing company and to be regulated
34 pursuant to Sections 6 through Section 8.

35 (c) Upon such a filing, all rates, terms, and conditions for the
36 services provided by that incumbent local exchange carrier contained in the

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1 tariffs and end-user contracts that were in effect on the date twelve months
 2 prior to the date of election under this Section shall be deemed just and
 3 reasonable. However, nothing herein shall restrict any customer's right to
 4 complain to the Commission regarding quality of service or the Commission's
 5 right to enforce any quality of service rules and standards which are equally
 6 imposed on all telecommunications providers.

7 (d) A rural telephone company, excluding Tier One Companies, which
 8 elects to be regulated pursuant to this Section may terminate that election by
 9 filing a notice with the Commission. Upon terminating that election, the
 10 rural telephone company may not thereafter, for a period of five years from
 11 date of the termination notice under this paragraph, elect to be regulated
 12 under this Section.

14 SECTION 7. Regulation of Rates for Basic Local Exchange Service and
 15 Switched Access Service of Electing Companies.

16 (a) The rates for basic local exchange service and switched access
 17 services that were in effect in the date twelve months prior to the date of
 18 filing of a notice of election by a local exchange carrier pursuant to Section
 19 6 shall be the maximum that such electing local exchange carrier may charge
 20 for such services for a period of three years after the date of filing,
 21 excluding rate increases ordered by the Commission pursuant to Section 4. An
 22 electing company may decrease or, subsequent to a decrease, increase up to the
 23 rate that was effective at the time of election pursuant to this Section. Such
 24 rate changes shall be effective immediately, without Commission approval, by
 25 filing a tariff or notice with the Commission.

26 (b) After the expiration of such three year period, the rates for basic
 27 local exchange services and switched access services, excluding the intrastate
 28 carrier common line charge, may be adjusted by the electing company filing a
 29 price list with the Commission, as long as such rates remain at or below the
 30 inflation-based rate cap. Inflation shall be measured by the year-over-year
 31 percent change in the gross domestic product price index (GDP-PI) calculated
 32 by the U.S. Department of Commerce, or any successor to such index. The
 33 electing company is authorized to adjust the rate cap for each basic local
 34 exchange service and switched access service by seventy-five percent of this
 35 inflation measure, adjusted for exogenous changes specified in paragraph (e)
 36 of this Section, and excluding rate increases ordered by the Commission

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1 pursuant to Section 4. The rate cap may only be adjusted once each twelve
 2 months beginning at the expiration of the three year period after the date of
 3 initial filing to be regulated pursuant to Sections 6 through 8.

4 (c) As long as an electing company is in compliance with paragraphs (a)
 5 and (b) of this Section, such rates are deemed just and reasonable.

6 (d) Notwithstanding the provisions of this Section, if, at any time
 7 following the three year anniversary of the date of election pursuant to this
 8 Section, another telecommunications provider is providing basic local exchange
 9 service or switched access service within an electing company's local exchange
 10 area, the electing company may, within any exchange of the electing company in
 11 which another telecommunications provider is providing these services,
 12 commence determining its rates for basic local exchange service and switched
 13 access services in the same manner that it determines its rates for services
 14 other than basic local exchange service and switched access service, pursuant
 15 to Section 8(c).

16 (e) For purposes of this Section, the term exogenous change shall mean a
 17 cumulative impact on a local exchange carrier's intrastate regulated revenue,
 18 expenses or investment of more than three percent over a twelve month period,
 19 that is attributable to changes in federal, state, or local government
 20 mandates, rules, regulations or statutes.

21
 22 SECTION 8. Regulatory Framework for Electing Companies.

23 (a) The earnings of an electing company shall not be subject to rate of
 24 return or rate base monitoring or regulation, and the Commission shall not
 25 consider rate of return, rate base, or the earnings of an electing company in
 26 connection with rate changes made pursuant to this Section or Section 7.

27 (b) An electing company is authorized to determine and account for its
 28 investments, revenues and expenses, including depreciation expenses, pursuant
 29 to generally accepted accounting principles.

30 (c) An electing company may increase or decrease its rates for
 31 telecommunications services other than basic local exchange service and
 32 switched access services and establish rates for new services by filing a
 33 tariff or a price list with the Commission. Such rates shall not require
 34 Commission approval. The tariff or price list shall be effective upon filing
 35 or at such future time as the electing company shall designate. So long as
 36 rates for services are in accordance with this Section and Section 7, such

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1 rates are deemed just and reasonable. Any service that is not a
2 telecommunications service is not subject to Commission regulation, and rates
3 for such services need not be filed with the Commission.

4 (d) An electing company may package any of its services with any other
5 service it or its affiliates offer, with or without a discount, provided that
6 services whose rates are capped under Section 7 may be purchased separately at
7 the rate which is capped in accordance with that Section.

8
9 SECTION 9. Authorization of Competing Local Exchange Carriers.

10 (a) Consistent with the Federal Act and the provisions of Section 10,
11 the Commission is authorized to grant certificates of convenience and
12 necessity to telecommunications providers authorizing them to provide basic
13 local exchange service and/or switched access service to an incumbent local
14 exchange carrier's local exchange area if and to the extent that such
15 applications otherwise comply with state law, designate the geographic areas
16 proposed to be served by such applicants, and the applicants demonstrate they
17 possess the financial, technical and managerial capacity to provide such
18 competing services. Competing local exchange carriers shall be required to
19 maintain a current tariff or price list with the Commission, and to make
20 prices and terms of service available for public inspection. Retail prices of
21 competing local exchange carriers shall not require prior review or approval
22 by the Commission.

23 (b) A government entity may not provide, directly or indirectly, basic
24 local exchange service. After reasonable notice to the public and public
25 hearing, a government entity owning an electric utility system or television
26 signal distribution system may make any telecommunications capacity or
27 associated facilities which it now owns, or may hereafter acquire, available
28 to the public upon such terms and conditions as may be established by its
29 governing authority, except such government entity may not use such
30 telecommunications capacity or facilities to provide, directly or indirectly,
31 basic local exchange service. Any restriction contained in this paragraph
32 shall not be applicable to the provision of telecommunications services or
33 facilities to the extent used solely for 911, E911, other emergency services,
34 educational or medical purposes, or for the provision of telecommunications
35 services or facilities by an educational institution to its students.

36 (c) A government entity which operates an electric utility system may

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1 deny any telecommunications provider access to its electric utility poles,
2 ducts, conduits, or rights-of-way, on a nondiscriminatory basis where there is
3 insufficient capacity and for reasons of safety, reliability, and generally
4 applicable engineering purposes.

5 (d) Except to the extent required by the Federal Act and this Act, the
6 Commission shall not require an incumbent local exchange carrier to negotiate
7 resale of its retail telecommunications services, to provide interconnection,
8 or to sell unbundled network elements to a competing local exchange carrier
9 for the purpose of allowing such competing local exchange carrier to compete
10 with the incumbent local exchange carrier in the provision of basic local
11 exchange service. Promotional prices, service packages, trial offerings, or
12 temporary discounts offered by the local exchange carrier to its end-user
13 customers are not required to be available for resale.

14 (e) The prices for unbundled network elements shall include the actual
15 costs, including an allocation of joint and common costs and a reasonable
16 profit.

17 (f) As provided in Sections 251 and 252 of the Federal Act (47 USC 251
18 and 252), the Commission's authority with respect to interconnection, resale,
19 and unbundling is limited to the terms, conditions and agreements pursuant to
20 which an incumbent local exchange carrier will provide interconnection,
21 resale, or unbundling to a CLEC for the purpose of the CLEC competing with the
22 incumbent local exchange carrier in the provision of telecommunications
23 services to end-user customers.

24 (g) The Commission shall approve, as permitted by the Federal Act,
25 resale restrictions which prohibit resellers from purchasing retail local
26 exchange services offered by a local exchange carrier to residential customers
27 and reselling those retail services to nonresidential customers, or
28 aggregating the usage of multiple customers on resold local exchange services,
29 or any other reasonable limitation on resale to the extent permitted by the
30 Federal Act. The wholesale rate of any existing retail telecommunications
31 services provided by local exchange carriers that are not exempt from Section
32 251(c) of the Federal Act (47 USC 251(c)) and that are being sold for the
33 purpose of resale, shall be the retail rate of the service less any net
34 avoided costs due to the resale. The net avoided costs shall be calculated as
35 the total of the costs that will not be incurred by the local exchange carrier
36 due to it selling the service for resale less any additional costs that will

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1 be incurred as a result of selling the service for the purpose of resale.

2 (h) Incumbent local exchange carriers shall provide CLECs, at reasonable
 3 rates, nondiscriminatory access to operator services, directory listings and
 4 assistance, and 911 service only to the extent required in the Federal Act.

5 (i) The Commission shall approve any negotiated interconnection
 6 agreement or statement of generally available terms filed pursuant to the
 7 Federal Act unless it is shown by clear and convincing evidence that the
 8 agreement or statement does not meet the minimum requirements of Section 251
 9 of the Federal Act (47 USC 251). In no event shall the Commission impose any
 10 interconnection requirements that go beyond those requirements imposed by the
 11 Federal Act or any interconnection regulations or standards promulgated under
 12 the Federal Act.

13 (j) In the event the Commission is requested to arbitrate any open
 14 issues pursuant to Section 252 of the Federal Act (47 USC 252), the parties to
 15 the arbitration proceeding shall be limited to the persons or entities
 16 negotiating the agreement.

17
 18 SECTION 10. Competing Local Exchange Carriers in Service Areas of Rural
 19 Telephone Companies.

20 (a) A rural telephone company shall not have any duty to negotiate
 21 terms and conditions of, or to enter into any agreement for the provision to
 22 any other telecommunications provider of interconnection with the rural
 23 telephone company's network as provided by Section 251(c) and Section 252 of
 24 the Federal Act (47 USC 251(c) and 252), including access to its network
 25 elements on an unbundled basis, resale of any telecommunications service that
 26 such rural telephone company provides at retail to subscribers, or physical
 27 collocation, unless and until a telecommunications provider has made a bona
 28 fide request to the rural telephone company for such services, and the
 29 Commission has determined, in accordance with the Federal Act, that the rural
 30 telephone company must fulfill such request.

31 (b) With regard to a rural telephone company that is not also a Tier One
 32 Company, the Commission may only determine that the rural telephone company
 33 must fulfill such a request if, after reasonable notice and hearing, it is
 34 established by clear and convincing evidence that

35 (1) the request is not unduly economically burdensome;

36 (2) the request is technically feasible; and

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